

EXHIBIT D

CITY OF LANETT, ALABAMA

CITY COUNCIL MEETING

DECEMBER 14, 2005

5:30 P.M. (EST)

APPEAL FOR DISCIPLINARY ACTION TAKEN
AGAINST LIEUTENANT DEAN VAN METER

PRESENT:

MAYOR: Oscar Crawley
CITY MANAGER: Joel Holley
CITY ATTORNEY: Larry Nix, Esq.

COUNCIL MEMBERS PRESENT:

District 1 - Tony Malone
District 2 - Jamie Heard
District 3 - Kyle McCoy
District 4 - John Duskin
District 5 - Mike Yarbrough

ALSO PRESENT:

Dean Van Meter

FOR DEAN VAN METER:

Jim Ingram, Esq.
Bill Harris, Esq.

MELANIE H. GARNER, CSR, RPR

COURT REPORTER

PROCEEDINGS

(DECEMBER 14, 2005)

1
2
3 MAYOR CRAWLEY: I would like to call the
4 meeting to order, and we are here tonight to
5 hear an appeal for disciplinary action taken
6 against Lieutenant Dean Van Meter. And so at
7 this time I entertain a motion that we go into
8 executive session.

9 MR. NIX: Mr. Mayor, I've given you the
10 reasons under the New Open Meetings Law that
11 this can be taken into executive session. So
12 it involves the good name and character of an
13 individual and the discipline and/or dismissal
14 of a public employee. Those are the reasons
15 that we're citing for going into it.

16 Also, I would note that after one of the
17 council members makes a motion, it must be a
18 roll-call vote. And, at the conclusion of the
19 vote, assuming that the council moves to go
20 into executive session, Your Honor needs to
21 tell the people, the public here, that we will
22 reconvene at the end of the executive session,
23 of what your estimate of the time is before we
24 reconvene.

25 MR. INGRAM: If it please the council, on

1 behalf of Lieutenant Van Meter, we would
2 respectfully waive any closed part of this
3 hearing, if you want to take that into
4 consideration.

5 MR. NIX: Mr. Mayor, they had said that.
6 The only problem that I have, as the city's
7 counsel, is that there may be testimony that's
8 brought up that I don't know about that might
9 endanger the City. So I would advise the
10 council to go into executive session.

11 MAYOR CRAWLEY: I entertain a motion.

12 COUNCILMAN DUSKIN: Mr. Mayor, I'd like to
13 move that we go into executive session and
14 discuss the general reputation and character of
15 an individual and consider the discipline and
16 dismissal of a public employee.

17 MAYOR CRAWLEY: Second?

18 COUNCILMAN MCCOY: Second.

19 MAYOR CRAWLEY: Roll call, please.

20 CITY CLERK: Council Member Malone?

21 COUNCILMAN MALONE: No.

22 CITY CLERK: Council Member Duskin?

23 COUNCILMAN DUSKIN: Yes.

24 CITY CLERK: Council Member Heard?

25 COUNCILMMAN HEARD: Yes.

1 CITY CLERK: Council Member Yarbrough?

2 COUNCILMAN YARBROUGH: Yes.

3 CITY CLERK: Council Member McCoy?

4 COUNCILMAN MCCOY: Yes.

5 CITY CLERK: Mayor Crawley?

6 MAYOR CRAWLEY: Yes.

7 MR. NIX: And then, Mr. Mayor, again,
8 according to the New Open Meetings Law, you
9 should announce that you will reconvene at the
10 end of the executive session and your estimate
11 of how long you think that will be. I really
12 can't help you there. Maybe two hours.

13 MAYOR CRAWLEY: We will reconvene in
14 approximately two hours out of executive
15 session. So we'll ask everybody to leave the
16 area.

17 (EXECUTIVE SESSION)

18 MR. NIX: We've asked, with the consent of
19 Mr. Van Meter, while we're sitting here
20 somewhat of in a courtroom scenario, we hope
21 that this will be more of an informal
22 process -- I will finish when the room is
23 vacated.

24 (BRIEF INTERRUPTION)

25 MR. NIX: Mr. Mayor, what I started to say

1 before Judge Holley finished securing the room,
2 in order to expedite the proceedings and ensure
3 an orderly process, we've asked, with the
4 consent of Mr. Ingram and Lieutenant Van Meter
5 and Mr. Bill Harris, that Judge Calvin Milford
6 simply act as a hearing officer to keep these
7 proceedings moving ahead in a steady and
8 orderly fashion. Again, our personnel policy
9 provides for this. We want and the intent of
10 this is to give Lieutenant Van Meter all
11 elements of due process to which he's entitled,
12 the ability to call his witnesses, the ability
13 to cross-examine our witnesses, the ability to
14 refute the charges, to have the charges against
15 him read.

16 I'm going to ask Judge Milford if he would
17 to read those two -- I hate to say charges --
18 but disciplinary actions which brings about
19 this appeal. After that, I'm also going to ask
20 Judge Milford to make a roll call of each of
21 the council members, because you will be the
22 body that will ultimately vote on this to
23 ensure that Lieutenant Van Meter is getting a
24 fair and impartial hearing.

25 Judge Milford, would you read the

1 disciplinary charges that Lieutenant Van Meter
2 has appealed?

3 JUDGE MILFORD: Sure. There are two or
4 appear to be two disciplinary actions in
5 consideration at this point in time. The first
6 reads as follows: On or about October 3rd,
7 2005, Lieutenant Van Meter removed certain
8 personnel files from boxes of City-owned files
9 that were to be destroyed by burning them.
10 After removing the files from the boxes without
11 permission, they were subsequently taken to his
12 residence. Files belonging to Brian Poe and
13 Stan Ross were subsequently turned over to
14 them. The taking of city property and the
15 possession of stolen personnel files and the
16 subsequent distribution of stolen personnel
17 files is a violation of Rules and Regulations
18 1.230, conduct unbecoming an officer. Action
19 taken was termination of employment with the
20 City of Lanett Police Department for violation
21 of City of Lanett Police Department Rules and
22 Regulations 1.230, conduct unbecoming of an
23 officer. That action was taken by Chief Ron W.
24 Docimo.

25 The other charges that on or about October

1 the 3rd, 2005, Lieutenant Van Meter removed
2 several personnel files from boxes of
3 City-owned files that were to be destroyed by
4 burning them. After removing the files from
5 the boxes without permission, they were
6 subsequently taken to his residence. The
7 taking of city property constitutes theft of
8 city property. The action taken was
9 termination of employment with the City of
10 Lanett Police Department for violation of City
11 of Lanett Employee Personnel Handbook Group II
12 offense, Section A, Subsection 10 otherwise
13 known as theft of city property, specifically
14 referring to personnel files. That action was
15 taken by Chief Ronald W. Docimo.

16 Now, again, let me say at the start that my
17 understanding of a personnel hearing such as
18 this is that they're to be conducted
19 informally, and that I certainly don't intend
20 by my being here to give this appearance of a
21 trial or anything of that nature. I'm here for
22 the convenience of all parties, and I'm happy
23 to do so.

24 At any point in time if anyone feels like
25 the proceeding is not going in the right

1 direction, if you'll let me know I'll try to
2 see if I can mediate and moderate and get
3 everybody back focused on what you want to get
4 focused on.

5 Both sides have asked me to ask each of you
6 the following question, and the question is as
7 follows. And I'll each of you individually
8 once I read the question. Do you know of any
9 reason why you cannot render a fair, impartial,
10 and unbiased decision with regards to the
11 disciplinary appeal before you?

12 Council Member Malone?

13 COUNCILMAN MALONE: No.

14 JUDGE MILFORD: Council Member Duskin?

15 COUNCILMAN DUSKIN: No.

16 JUDGE MILFORD: Council Member Heard?

17 COUNCILMAN HEARD: No.

18 JUDGE MILFORD: Council Member Yarbrough?

19 COUNCILMAN YARBROUGH: No.

20 JUDGE MILFORD: Council Member McCoy?

21 COUNCILMAN MCCOY: No.

22 JUDGE MILFORD: And Mayor Crawley?

23 MAYOR CRAWLEY: No.

24 JUDGE MILFORD: Okay. Having said that, I
25 believe, Mr. Nix, we have agreed before the

1 meeting that the City would present evidence
2 first.

3 MR. NIX: We will. I understand that
4 Mr. Ingram had stated a request which he was
5 kind enough to state before we convened. Now I
6 will give him the opportunity to make that
7 request.

8 MR. INGRAM: Mayor and council, thank you.
9 At this time I would respectfully ask that the
10 mayor recuse himself from these proceedings.
11 There has been indications on our behalf that
12 he may have some sort of bias or preconceived
13 notion about the disciplinary action of
14 Lieutenant Van Meter. So on that, I would ask
15 that you would recuse yourself from voting in
16 this process.

17 MR. NIX: And, Mr. Mayor, before you
18 respond, on behalf of the City, our response to
19 that would be that this hearing itself gives
20 Lieutenant Van Meter and his counsel every
21 attempt to sway, influence, convince this
22 council as to the recommendations of the city
23 manager and the police chief are not to be
24 upheld. That's what they have the right to
25 do.

1 Also, each of you has just read into the
2 Record of this proceeding that there is no
3 reason why each of you cannot render a fair,
4 unbiased, and impartial opinion.

5 Mr. Mayor, I would hope that you would not
6 recuse yourself.

7 MAYOR CRAWLEY: I am the mayor, chief
8 executive officer of this city in charge of
9 administration of personnel policy. And I have
10 one vote in the outcome of Dean Van Meter of
11 this hearing. And I'm not going to excuse
12 myself because I am the mayor. And I'm the one
13 that would have to call the meeting to order
14 after the hearing is over. I guess, do you
15 want me to leave and not be here for the
16 voting?

17 MR. INGRAM: No, sir. My request was that
18 you refrain from voting on the matter.

19 MAYOR CRAWLEY: No, I'm not going to do
20 that, Jim. I'm the mayor of the City, and it
21 is my job to make sure that the personnel files
22 are taken care of in this city. I'm not going
23 to refuse to vote, because I can vote and be
24 fair to Lieutenant Van Meter and to you and to
25 others that are represented here.

1 JUDGE MILFORD: Mr. Mayor, also, for the
2 Record, I would like -- and if these statements
3 are incorrect -- and I don't think they are --
4 but Mr. Ingram and Mr. Harris can correct me.
5 I would like to confirm that Lieutenant Van
6 Meter has received a copy of the charges in
7 writing; is that correct?

8 MR. INGRAM: Correct.

9 MR. NIX: That he has received an entire
10 copy of all of our investigation file and that
11 there under our personnel policy, Mr. Mayor --
12 again, this is just sort of housekeeping
13 details -- Lieutenant Van Meter has an
14 opportunity to appear. He has three steps in
15 his grievance process. One is to appear before
16 the city manager. Two is to have an appearance
17 before the mayor and council. And the third
18 step is the step we're in now which is a full
19 due process hearing.

20 It is correct, Mr. Harris and Mr. Ingram,
21 that Lieutenant Van Meter has waived that
22 second appearance before. And I just wanted to
23 confirm that for the Record -- the second
24 appearance before the mayor and council and
25 agreed to proceed right to this hearing.

1 MR. INGRAM: That's correct.

2 MR. NIX: Okay. Again, Judge and Mayor,
3 His Honors, we want to keep this fairly
4 informal. I hate to say I call Judge Holley to
5 the stand. I would like for Judge Holley to be
6 sworn in, because our personnel policy does say
7 that these proceedings will take place under
8 oath. So I would like for him to be sworn in
9 and ask him some question and, of course, give
10 Lieutenant Van Meter and his representatives a
11 chance to ask questions as well.

12 JUDGE MILFORD: How do you want to do
13 this?

14 MR. NIX: Judge, would you mind swearing
15 them?

16 (WITNESS SWORN)

17 JOEL HOLLEY,

18 the witness, having first been sworn to
19 speak the truth, the whole truth, and nothing
20 but the truth, testified as follows:

21 EXAMINATION

22 BY MR. NIX:

23 Q. Judge, first of all, would you just explain to
24 the judge and council what the process is about
25 destroying -- about the requirement the city

1 has to destroy certain sensitive personnel
2 files and other financial information?

3 A. Certainly under the state law, there is a
4 record retention schedule and guidelines.
5 Certain information that is generated by any
6 government unit, whether it be municipality,
7 county, or state certainly contains sensitive
8 materials such as personnel files, payroll
9 records, that sort of thing, there are
10 basically two ways to destroy personnel records
11 or old records. The purpose being to keep
12 anyone from having access. That is by
13 shredding or burning.

14 Q. And in the latter part of September of this
15 year, were there not approximately nine -- I
16 call them banker boxes -- file boxes full of
17 such files which the personnel director
18 directed be destroyed?

19 A. Yes. When Ms. Gunnels moved to the back
20 office, actually she and Larry Ray swapped --
21 he swapped offices, put her in the back office
22 because she would be handling primarily human
23 resource functions of personnel and insurance
24 since the City became self-insured. We found
25 that, apparently, there had been no records

1 removed or destroyed in a number of years,
2 probably 25 years. So it was very crowded and
3 she didn't have room to put them all in her
4 office. So she actually went to work to
5 determine what records were proper to be now
6 finally disposed of. That we kept them so long
7 to make sure that, number one, we could legally
8 get rid of them. One of the interesting things
9 we found out in that was that an employee
10 newsletter that we now generate in-house for
11 some reason has to be kept forever. That's
12 strange. But employee newsletters under that
13 guideline has to be kept forever. And there
14 are different time frames for what things that
15 you have to keep or how long you have to keep
16 them.

17 So she determined that certain old records,
18 certainly for employees who no longer worked
19 here, have not worked here in awhile, had been
20 retained long enough so they could be properly
21 destroyed. And, also, there were a number of
22 old payroll records that were very old and
23 things like that that no longer had to be
24 kept.

25 We had no really other secure place to keep

1 them, because we, as you all know, we are sort
2 of cramped in space here in this building. So
3 she, after checking -- also, you have to keep a
4 list of things that you destroy. So after
5 doing that, she set about trying to come up
6 with a way to properly destroy the records.

7 Q. I'm going to jump forward a little bit.

8 A. Yes, sir.

9 Q. To a day when Lieutenant Van Meter actually
10 came to your office. He admitted taking
11 personnel files, right?

12 A. Yes, sir.

13 Q. How long after the burning did your meeting
14 with Lieutenant Van Meter take place?

15 A. The employee, the best we can -- or the police
16 department's internal investigation indicated
17 that the files were taken October the 3rd. And
18 the reason that date is verifiable is because
19 that's the date the boxes were loaded on the
20 back of the city vehicle. That was the day
21 that we had a council meeting and the
22 controlled burn of a dilapidated house occurred
23 after the council meeting. That was October
24 the 3rd. Mr. Van Meter contacted me at my home
25 by phone on late evening before dark but late

1 evening of the Sunday, October the 30th.
2 Monday morning then, October 31st, he met me as
3 I came to the city hall, came into my office
4 and then turned over several files to me.

5 Q. Was your file one of them?

6 A. Yes, sir.

7 Q. Excuse me. Let me rephrase that. Was the
8 city's file that contained information about
9 you among the files?

10 A. In fact, I remembered because there was a file
11 on top. And I don't remember how many there
12 were, but the one on top had my name. So that
13 got my attention.

14 I would say that prior to that date when I
15 was informed by the chief of police that there
16 was a problem, he had been told or found out
17 somehow that some files were taken, and that,
18 in fact, a local attorney was in possession of
19 one of the files. Prior to all of this
20 happening, I actually went to that local
21 attorney's office and informed him that I was
22 aware that he was in possession of city
23 property, and that being an employee personnel
24 file from an employee that used to work at the
25 city. And that certainly the employee would be

1 entitled to a copy of anything in there. And
2 that he himself could copy it at his own risk.
3 That was between him and his client. But the
4 file itself and contents were city property,
5 and I certainly desired that it be returned.
6 It was returned to the city hall within an hour
7 or hour and a half.

8 COUNCILMAN MCCOY: Judge?

9 MR. HOLLEY: Yes, sir.

10 COUNCILMAN MCCOY: You said the controlled
11 burn was on the 3rd.

12 MR. HOLLEY: The best I can recollect,
13 October the 3rd after council meeting.

14 COUNCILMAN MCCOY: And then Lieutenant Van
15 Meter contacted you on the 30th?

16 MR. HOLLEY: Yes, sir. That was Mr. Nix's
17 question. He contacted me at home on my city
18 cell on October the 30th. He returned those
19 files to me Monday. And I assume he was off
20 duty because he wasn't in uniform. Monday,
21 October 31st?

22 COUNCILMAN MCCOY: What day did the
23 internal investigation begin on the
24 disappearance of these files?

25 MR. HOLLEY: I have no idea. Somewhere,

1 the best I can recollect, around the 26th.
2 Because I think I actually went to local
3 Attorney Phillips -- Don Phillips' office on
4 October the 28th.

5 COUNCILMAN MCCOY: Of October?

6 MR. HOLLEY: Yes, sir. Internal
7 investigation, in my opinion -- the chief would
8 have that -- somewhere around the 26th.

9 COUNCILMAN MCCOY: When did we know that
10 files had been taken?

11 MR. HOLLEY: I assume the 26th, as far as
12 him. I knew the day he came to me, which was
13 around the 26th of October.

14 COUNCILMAN MCCOY: Don Phillips?

15 MR. HOLLEY: That Don Phillips had the file
16 belonging to a former employee, Brian Poe.

17 COUNCILMAN MCCOY: Okay.

18 MR. HOLLEY: So, to answer your question, I
19 guess, succinctly, the best we can recollect
20 the files were burned or the files were taken
21 from the back of a city vehicle October the 3rd
22 of 2005. The files that were returned to me by
23 Employee Van Meter was October the 31st. The
24 morning of October the 31st.

25 Q. The whole point -- let's get to the chase.

1 A. It happened about a month.

2 Q. Several weeks passed between the time. And the
3 investigation had already begun by the time you
4 got your file back?

5 A. Yes, sir.

6 Q. And you didn't even know he had your file?

7 A. No, sir. In fact, I didn't even know I had a
8 file. I can explain that. When I finished law
9 school in 1976, the present mayor and council
10 at that time -- the mayor, if I remember, was
11 Mr. Buddy Colley. I was a new lawyer in town,
12 opened an office, and I was hired by the mayor
13 and council to act as the city magistrate or
14 city judge.

15 When Mr. Van Meter handed me those files
16 and I saw my name on top, I quickly opened the
17 file. There were two pieces of paper in that
18 file, a copy of an oath of office and my W-2
19 form from 1977 which contained my name and my
20 social security number and other stuff.

21 COUNCILMAN MALONE: Mr. Holley, I have a
22 question. The city attorney asked you what the
23 process or what the requirements that the city
24 has in destroying sensitive files. Do the City
25 have a policy in place? Yes or no?

1 MR. HOLLEY: I don't know, Mr. Malone, if
2 there's been a written policy in place since
3 I've been here. I haven't found one. Like I
4 say, I don't know that any file has ever been
5 destroyed here before. But those are one of
6 the things that certainly, as far as written
7 policy, in destroying files. The most
8 important things is that since they contain
9 sensitive material that you have a duty to
10 destroy, not to abandon or throw away. The two
11 methods of destroying are basically burning,
12 totally consuming, and/or shredding. And, of
13 course, the only shredder we have is one that
14 fits in an office waste basket.

15 COUNCILMAN MALONE: I have a question.
16 What do we do if we have a witness that's not
17 here that we need to talk to? Ms. Gunnels is
18 not here?

19 MR. HOLLEY: Yes, sir, she's available.

20 COUNCILMAN MALONE: Okay.

21 MR. NIX: But, to answer your question,
22 Council Member Malone, this is an informal
23 process. It's not a court hearing, and we
24 don't have subpoena power to mandate. In fact,
25 there are several witnesses, such as Mr. Brian

1 Poe, that we would very much like to have
2 here. But he refused to cooperate.

3 MR. HOLLEY: I will say this for our
4 Record. Me and Mr. Harris met this morning.
5 Mr. Harris produced a list of witnesses,
6 employee witnesses, if you call it that. And I
7 called Counsel Nix on the speaker phone, and we
8 all talked. Neither the City nor the employee
9 has subpoena power. That in an effort of
10 cooperation, I went to the department heads.
11 There was a police officer that he desired and
12 several fire people. I went to those
13 department heads and said, Would you contact
14 your employees and see if they would be
15 available if they want to be called. I can't
16 compel them to be here. The City certainly is
17 not going to pay them overtime because they're
18 witnesses that Mr. Harris and Mr. Ingram
19 wanted. And they certainly said they would
20 attempt to, but we can't compel anybody to be
21 here. If they're here, they're here because
22 they want to be here or they were asked to be
23 here.

24 COUNCILMAN MALONE: Yes, sir. But we don't
25 have any policy for destroying sensitive

1 personnel files in place right now? He asked
2 you to explain to us --

3 MR. HOLLEY: To answer your question,
4 Mr. Malone, I'm not aware of any written policy
5 that the City has at this point in time in the
6 personnel policy that exists that's been in
7 existence for a number of years as to
8 destroying files.

9 COUNCILMAN MCCOY: Does the State have a
10 policy?

11 MR. HOLLEY: I don't know that the State
12 has a, quote, policy. They have certain
13 guidelines that you follow.

14 COUNCILMAN MCCOY: Okay. Okay.

15 COUNCILMAN MALONE: And I might be wrong,
16 but correct me if I'm wrong. It says in this
17 book here, a municipality council or a
18 committee authorized by the council may by
19 resolution issue subpoena pursuant to Section
20 11-43-11.3 of the Code. What is that?

21 MR. NIX: Our personnel policy doesn't
22 provide that. I have to go by our personnel
23 policy first, Mr. Malone.

24 MR. HOLLEY: What did you read from,
25 Mr. Malone? I didn't hear you.

1 COUNCILMAN MALONE: I'm reading from the --

2 MR. HOLLEY: That's league municipality --

3 COUNCILMAN MALONE: That's Code Section
4 11-43-11.3 of the Code.

5 MR. NIX: Well, let me say this,
6 Mr. Malone. We've got all the witnesses here
7 we want. If Mr. Harris --

8 COUNCILMAN MALONE: Well, I mean, you just
9 mentioned that we don't have the power to
10 subpoena.

11 MR. NIX: No, we don't, not in our
12 personnel policy.

13 MR. HARRIS: Mr. Nix, could I add something
14 to what you're saying?

15 MR. NIX: Sure.

16 MR. HARRIS: The City -- I met with Judge
17 Holley this morning. We talked about this at
18 length. They're at a disadvantage by not being
19 able to subpoena, as are we. The City has gone
20 overboard, for the Record, to try to be
21 accommodating to us for anybody that we might
22 want here, trying to make them available. But
23 they cannot just by virtue of the fact that
24 they're an employee make them be here. And we
25 discussed this at length, and we had a

1 conference call with Mr. Nix. And, you know,
2 the City has -- you know, Judge Holley
3 personally took me to the fire department, and
4 I talked to the chief and told him who we
5 thought that we might be questioning. The
6 chief said he would make every one of them
7 available. I think everybody we had but three
8 people would be working. And I said, I'll get
9 in touch with them.

10 MR. HOLLEY: Most of them were actually on
11 duty, anyway.

12 MR. HARRIS: Right. And I told him, you
13 know, don't go bother these people off duty. I
14 don't think we'll need them. We'll just give
15 you a list of everybody we can possibly think
16 of to try to give notice. Did the same thing
17 with Chief Docimo. Went over talked to him.
18 The same result. So, you know, we're together
19 as far as the subpoena thing, but we understand
20 that and that's not something that the City
21 made that rule. That's just because this is an
22 administrative hearing. And they have gone
23 overboard to be accommodating to us, and we
24 appreciate that.

25 MR. HOLLEY: Mr. Malone Section 11-43-30

1 through 33 was special legislation passed by
2 the Alabama Legislature to give police officers
3 protection in disciplinary hearings. We're not
4 bound by that legislation, because 11-43-31 or
5 32 says that this does not apply to
6 municipalities who have due process procedures
7 in place by the year of 2001. So we didn't
8 come under that.

9 Q. The long and short of it, Lieutenant Van Meter
10 admitted to you when he came to see you that he
11 took the files?

12 A. Yes, sir.

13 Q. He admitted that he gave them to people outside
14 the City?

15 A. Yes, sir.

16 Q. Now, reading from your statement -- and
17 Lieutenant Van Meter is here, so he can
18 certainly refute this -- and this is in part of
19 what has been provided to Mr. Harris and
20 Mr. Ingram from your statement. "Then began
21 talking and the story was he saw some firemen
22 burning files in a 55 gallon drum near the fire
23 department. He said, one of them said they
24 were being thrown away. He got some of them.
25 I asked him, why. He said he figured his

1 friends would want them. At some point I told
2 him that I had retrieved the file with the name
3 Brian Poe from Attorney Don Phillips, that the
4 files are city property, that they're not being
5 discarded but being destroyed by burning. I
6 asked him at some point which fireman or who
7 said they were being thrown away. He said he
8 didn't remember who was standing out there."

9 And that's just a partial. The point is,
10 he told you that he took the files?

11 A. Yes, sir.

12 MR. NIX: All right. Again, Judge Milford
13 and Mayor Crawley and Mr. Ingram and Mr. Harris
14 and Mr. Van Meter, you know, I hate to say
15 "Your witness," but go ahead and ask Judge
16 Holley what you want to.

17 EXAMINATION

18 BY MR. HARRIS:

19 Q. Judge, Mr. Malone asked while ago about the
20 State guidelines for burning records and
21 everything. Can I walk over there where you
22 are?

23 A. Sure.

24 Q. Are you familiar with the Local Government
25 Records Commission, which is a state agency

1 which actually controls the destruction of
2 records for local municipalities?

3 A. No, sir, I'm not.

4 Q. Well, there is such an organization, Chapter
5 41-13-22 *Code of Alabama* establishes them. And
6 under 41-13-5 of the *Code of Alabama*, it
7 actually requires that the city has to get
8 permission from this state agency in order to
9 burn records. This is --

10 A. Hold on just a minute.

11 Q. This is the booklet that the State puts out.
12 It's under the Department of Archives and
13 History. And it states guidelines from
14 everything from airport authorities to parks
15 and recreation to anything else. It tells you
16 how long you need to keep them, how you need to
17 destroy them. Furthermore, they have this
18 procedural leaflet that they put out which is
19 Records Destruction Procedures for Local
20 Governments. It tells you how to destroy them,
21 when to destroy them. We've got this here if
22 y'all would like to look at it. Got it here
23 for y'all's consideration.

24 As I understood what you said, I've only
25 got one question for you. You know, you're

1 talking about -- Mr. Nix talking about Officer
2 Van Meter said he took the files. It is
3 undisputed, folks, that Dean took these files.
4 You know, he has admitted he took the files.
5 When he found out there was a problem, he
6 brought them back. Our contention is that this
7 ain't a theft of property. He thought and had
8 every reason to think that this was garbage.
9 And he was picking these files up and thought
10 these people might want them. When he found
11 out there was a problem, he brought them back.
12 Okay? So we're not disputing that. I want to
13 clear that up right now. This ain't a
14 "who-done-it." It's about whether what was
15 done was one thing or the other. And we
16 disagree with the City on what they think it
17 was.

18 As I understood what you said, the first
19 you heard about the files was when Mr. Phillips
20 called; is that correct?

21 A. No, that's not correct.

22 Q. Okay. I misunderstood you.

23 A. The first I heard is when the police chief of
24 the City of Lanett came to my office and closed
25 the door and says, we have a problem.

1 Basically he told me that we had at that point
2 an employee that had taken personnel files from
3 the back of the city vehicle.

4 Q. I'm sorry. I just wanted to get the time
5 right.

6 COUNCILMAN MCCOY: Let me make sure I'm
7 understanding this. Dean, you said you took
8 the files; is that correct?

9 MR. VAN METER: Sir?

10 COUNCILMAN MCCOY: You took the files?

11 MR. VAN METER: Yes, sir.

12 COUNCILMAN MCCOY: I want y'all to tell us
13 why it's not a terminatable offense, and I want
14 the City to tell us why it is. And then we can
15 make a decision on this pretty quick. I mean,
16 like you said, it's cut and dry. Why isn't
17 it? Why is it? Let's hear it.

18 MR. HARRIS: I think the City has got the
19 burden of proof here.

20 COUNCILMAN MCCOY: Well, I mean, they said
21 it's theft of property. Now, I want to know
22 why it's not.

23 MR. NIX: Well, who do you want to go
24 first?

25 COUNCILMAN MCCOY: Either one.

1 MR. HARRIS: Go ahead.

2 MR. NIX: All right. It's city property.
3 It was being destroyed. And Mr. Harris made
4 some good points. If the City was not
5 following certain protocols, that doesn't mean
6 that Lieutenant Van Meter is not guilty of what
7 he did. It's our property. It's no different
8 than a walkie-talkie or a telephone or a set of
9 pencils. If he thought it was being thrown
10 away, he's been a police officer for many
11 years. He should have walked up to somebody
12 and said, hey, is this being thrown away or is
13 this something that I can take?

14 As far as we know, the investigation didn't
15 reveal that. It was city property. It was
16 taken. It was distributed to people outside
17 the City. I don't know how else to put it.

18 COUNCILMAN MCCOY: Okay. Let's hear it.

19 MR. HARRIS: Well, basically the reason we
20 contend that he thought this was trash, this
21 stuff was being burned out in a 55 gallon
22 drum. The fire people were loading it up on
23 the truck. Dean came up, asked them what they
24 were doing. You know, just stopped by
25 talking. They told him it was personnel files

1 the City was throwing away, getting rid of. He
2 took them right there in front of them. There
3 was no deception here, absolutely no deception
4 whatsoever. None of them had a problem at the
5 time with him taking them. We asked
6 Ms. Gunnels when we had our hearing with the
7 judge if there was any specific instructions
8 given to anybody. If these files were so
9 confidential and so important, then why didn't
10 they have a police guard standing there or one
11 of the fire people to make sure nothing happens
12 to none of this, make sure they're all
13 destroyed.

14 They sat in the hallway out here, per the
15 statements by the city, that they sat there for
16 like six days in the hallway. Part of them
17 were in trash bags. That's in Ms. Gunnel's
18 statement. They were taken over to the house
19 after the fire people loaded them up. They
20 scattered them all over the floor in an
21 abandoned house, left them, came back to the
22 fire department, had supper, waited for the
23 fire department chief to get through with the
24 council meeting. And then they went and burned
25 it up.

1 Now, my contention is if the problem here
2 is the worry of confidential information
3 getting out, where is it more likely to get
4 out? Scattered on the floor of an abandoned
5 house and left for hours at a time or in the
6 hands of a 20-year police veteran? I mean,
7 that's common sense to me. I just don't think
8 this is a theft.

9 COUNCILMAN MCCOY: Let me ask you this. At
10 what point in time and whose authority gave him
11 permission to take it?

12 MR. HARRIS: Nobody gave him permission to
13 take it. But you can't steal trash. Per the
14 definition --

15 COUNCILMAN MCCOY: I'm kind of confused on
16 the word "trash." I put trash in my trash
17 can. I put trash in my trash can, and I throw
18 it out and it becomes public property. But, if
19 I'm sitting out there burning it, what is my
20 intent? Is it just to throw it away?

21 MR. HARRIS: From what we understand --

22 COUNCILMAN MCCOY: No. I mean, what's my
23 intent? If I'm burning trash, what is my
24 intent?

25 MR. HARRIS: To burn it up, to get rid of

1 it.

2 COUNCILMAN MCCOY: To destroy it?

3 MR. HARRIS: I would assume.

4 COUNCILMAN MCCOY: Okay. As opposed to
5 putting it out?

6 MR. HARRIS: Right. But when they were
7 loading it up, then they loaded it up -- they
8 quit burning it in the barrels because that was
9 time consuming, per the statements we've got
10 that the City has furnished to us. And I can
11 understand that. If you take a file and put it
12 in a barrel and you light it up --

13 COUNCILMAN MCCOY: It ain't going to light.

14 MR. HARRIS: That's right.

15 MR. HOLLEY: Part of the problem there was,
16 these files were compacted. They almost had to
17 put a sheet at a time. The wind was blowing,
18 cinders were blowing around.

19 MR. HARRIS: And I think the City had a
20 great idea. Let's get rid of this stuff quick.
21 We're to burn down this house in a controlled
22 burn, let's put it in there. Great idea. Good
23 way to get rid of it. Quick way to get rid of
24 it. But my point is this. It was taken.
25 First of all, it was left out here in the hall

1 for weeks or several days. Not weeks. Several
2 days. Then it was taken the very night it was
3 going to be burned and scattered, scattered out
4 all over the floor of this abandoned house and
5 then left there. Left there. There was no
6 instructions by anyone to make sure that this
7 stuff was not tampered with, bothered with. No
8 indication whatsoever that this was valuable,
9 confidential information that needed to be
10 safeguarded or protected.

11 Dean pulled up and talked to the fireman.
12 He thought it was just, you know, there. Just
13 junk. And, if he wanted to get it, he could
14 get it. And the intent for it to be a theft of
15 property -- we have a copy of the definition
16 from Title 13 of theft of property, and that's
17 a decision y'all can make. There's no
18 deception here. There's no intent here
19 whatsoever. May be poor judgment. We concede
20 that. We're not even going to argue that. It
21 may be poor judgment, but it ain't a theft of
22 property.

23 COUNCILMAN MCCOY: Now, Dean, tell me what
24 really happened. I done heard everybody else
25 talk. Tell me what really happened.

1 MR. VAN METER: That's what happened.

2 COUNCILMAN MCCOY: No, I want you to tell
3 me.

4 JUDGE MILFORD: I need to swear him in.

5 (DEAN VAN METER SWORN)

6 COUNCILMAN MCCOY: I just want you to tell
7 me what happened. I done heard everybody else.

8 MR. VAN METER: I come around the corner of
9 the building. I saw a fireman out there with
10 two boxes.

11 COUNCILMAN YARBROUGH: Excuse me. Were you
12 on duty?

13 MR. VAN METER: Yes, sir. Two boxes, and
14 they was throwing them in a 55 gallon drum. I
15 don't remember what firemen were there. I
16 didn't pay a whole lot of attention. I asked
17 them what they were doing. They said they was
18 throwing old files away.

19 And I said, well, I wonder if mine is in
20 there from 1978. Well, I went --

21 COUNCILMAN MCCOY: So you left and came
22 back. You went to the county. That's right.

23 MR. VAN METER: Yeah. And I was looking
24 for the one where Pete McCoy swore me in
25 originally from 1978. I got a copy. I would

1 like to have the original. So I was looking
2 for mine. One of the fireman says, Dean, I
3 think we done throwed yours away. And I'm
4 thinking, all right. So I saw Ricky Price's.
5 And I said, well, I wonder if Ricky would like
6 to have his. I saw Brian Poe's. I saw Stan
7 Ross's. I saw Greg Ray's, Peggy Hester's, and
8 I saw Joel's with his name from '77. And I
9 said, that must have been when he come right
10 out of law school and done -- I think he was
11 city judge for awhile.

12 MR. HOLLEY: Were those files there at the
13 55 gallon can? Or were they in the box on the
14 truck?

15 MR. VAN METER: They were taking them from
16 the box on the truck and putting them in the
17 can.

18 MR. HOLLEY: So the files that you got were
19 in the boxes on the truck?

20 MR. VAN METER: The ones that -- They were
21 taking them out and carrying them over there
22 and throwing them in the garbage can.

23 MR. HOLLEY: Statements on file from the
24 witnesses, firemen, that you didn't remember
25 their names said that they told you they were

1 burning files.

2 MR. VAN METER: They told me they was
3 throwing them away, yes, sir.

4 MR. HOLLEY: Well, I'm going by the
5 statements. Now, my question is, the files --

6 MR. INGRAM: Judge, excuse me. I think
7 Mr. McCoy has got the question here.

8 MR. HOLLEY: Well, okay. That's fine as
9 long as the City has a chance to respond.

10 COUNCILMAN MCCOY: He can go ahead and
11 finish, because I do have a question for you.
12 You were -- you were burning them, and you went
13 through and you got them? You got Ricky
14 Price's --

15 MR. VAN METER: They were throwing them in
16 the garbage cans and I was --

17 COUNCILMAN MCCOY: You got Brian's. You
18 got --

19 MR. VAN METER: Yes. I got several of
20 them.

21 COUNCILMAN MCCOY: And you got Judge's?

22 MR. HOLLEY: But I think it's important --

23 COUNCILMAN MCCOY: Now, hang on, Judge.

24 Let me ask you something. According to
25 these statements, you contacted Ricky Price?

1 MR. VAN METER: Yes.

2 COUNCILMAN MCCOY: You contacted Peggy?

3 MR. VAN METER: Um-hum.

4 COUNCILMAN MCCOY: You contacted Brian?

5 MR. VAN METER: No, I didn't contact Peggy.

6 COUNCILMAN MCCOY: You tried to contact
7 Peggy?

8 MR. VAN METER: I tried to contact her.
9 She had remarried and living somewhere in
10 Florida.

11 COUNCILMAN MCCOY: All right. Let me ask
12 you a question. Why did you get them all
13 October the 4th --

14 MR. VAN METER: They stayed in my pickup
15 truck for a couple of weeks.

16 COUNCILMAN MCCOY: Hang on. Hang on. Let
17 me ask my question.

18 MR. VAN METER: I mean, because if I would
19 have thought --

20 COUNCILMAN MCCOY: Let me ask you a
21 question first before you tell me the answer.
22 Why on October the 4th did you get them, and
23 you contacted Ricky because we got a statement
24 from him and we got a statement from you, I
25 believe from Peggy's husband and all of those

1 people?

2 MR. VAN METER: Yeah.

3 COUNCILMAN MCCOY: For you to take 26 days
4 for you to contact the Judge who's right here
5 in the same building with you?

6 MR. VAN METER: Well, I was thinking he was
7 going through budget hearings because y'all
8 hadn't approved a budget for the raise. And I
9 said, well, I'll see him. When I see him, I'll
10 give him his. Because they rode in my pickup
11 truck for a week or so. I mean, gentlemen, if
12 I was --

13 COUNCILMAN MCCOY: I mean, because we went
14 through a lot of trouble to get Peggy because
15 you called her ex-husband. You called some
16 jail down in Florida and stuff.

17 MR. VAN METER: I was trying to get a hold
18 of her, and I was trying to --

19 COUNCILMAN MCCOY: I'm just curious as to
20 why you didn't give Judge his?

21 MR. VAN METER: Because I hadn't seen him.

22 COUNCILMAN MCCOY: You work in the same
23 building.

24 MR. VAN METER: I hadn't seen him. I mean,
25 I see him every once in awhile. But, if I did

1 see him, hey, I got something for you, because
2 they was out there in my truck.

3 COUNCILMAN MCCOY: Okay.

4 MR. VAN METER: And, if I was going to
5 steal something, I wouldn't do it in broad
6 daylight in front of a bunch of firemen. I
7 mean, you know.

8 COUNCILMAN MCCOY: I'm just curious as to
9 why it took so long.

10 MR. HARRIS: I think your question goes
11 directly to the heart of what I said while ago
12 and what our whole argument is. He thought
13 that this was nothing more than just junk. I
14 mean, they were sitting in his truck, and he
15 hadn't seen the judge yet. I mean, he did
16 not -- and at the point in time when he found
17 out that there was a problem here, he was never
18 even called in and asked his side of the
19 story. The investigation was started.

20 MR. VAN METER: See, I got a phone call.

21 MR. HARRIS: And, when he found out, he
22 called up and said, hey, yeah, I got them.
23 I'll be glad to bring them back if there's a
24 problem.

25 MR. VAN METER: I got a phone call from

1 Eddie Chandler on Sunday afternoon saying that
2 I was being investigated.

3 MR. NIX: Did Eddie Chandler say how he
4 knew?

5 MR. VAN METER: No, sir.

6 MR. NIX: Did he indicate any council
7 member may have told him?

8 MR. VAN METER: He didn't say. He told me
9 that Teddy Morris was doing the investigation.

10 MR. NIX: Well, that's in your statement,
11 and I thought that was extremely interesting
12 that a person outside the city would call the
13 subject of an investigation.

14 MR. VAN METER: So when I asked him what it
15 was about, he told me about personnel files.
16 And he told me who was doing the investigation,
17 Detective Morris. I picked up the phone, and I
18 called Chief Docimo. He wouldn't make a
19 comment. I called Teddy Morris. He said that
20 he would need to talk to me later but he
21 couldn't talk to me right now about it. And so
22 then I said, well, I'll call Joel. So I called
23 Joel at home.

24 MR. NIX: A month later?

25 MR. HOLLEY: No. He called me on October

1 the 30th.

2 MR. VAN METER: That's when I found out
3 about it, when they're investigating me.

4 MR. NIX: Right. So you didn't call until
5 you knew you were being investigated?

6 MR. VAN METER: Right. Because I didn't
7 think it was a problem, not until then. And
8 then I said, I told Joel, I said -- I told
9 Joel, I said I will be down there first thing
10 in the morning because they're laying in there
11 on my kitchen table now. Because I took them
12 out of the truck.

13 MR. NIX: I think the question Council
14 Member McCoy asked was very pertinent. There's
15 a difference between throwing something away
16 and destroying it. By your own admission they
17 were burning it.

18 MR. VAN METER: No, I said they was
19 throwing them in the trash can. Y'all say they
20 was burning them. I don't know what they was
21 doing with them.

22 MR. NIX: Okay. Well, there are statements
23 in here saying that they were being burned.
24 And like Bill said, I mean, he's made some
25 points, valid points. Our point is, Dean, you

1 should have asked somebody. You should have
2 gone -- I mean, you've been a police officer
3 for a long time. Why didn't you call Judge
4 Holley? Why didn't you call the fire chief?

5 MR. VAN METER: Well, see, I didn't think
6 there was a problem, because they was throwing
7 them away.

8 MR. NIX: Well, do you know what? It
9 turned out it was a problem because it's City
10 property and you took it without permission.

11 MR. INGRAM: But as soon as -- see, the
12 property was supposedly taken on the 3rd. The
13 investigation was started on October the 27th.
14 At the time that he found out that there was
15 some problem, there was an investigation going
16 on, he immediately, immediately called and
17 informed "I've got these files. I didn't know
18 there was a problem. I'll bring them back to
19 you."

20 MR. NIX: Okay. My response to that would
21 be a lot of people don't say they're guilty
22 until their hand gets caught in the cookie jar.

23 COUNCILMAN MALONE: Well, I want to know
24 about this particular state law dealing with
25 destroying files, because that's the whole case

1 right there. You know, if we had that in
2 place, could this have been avoided? If we had
3 followed what the State had set forth?

4 MR. HOLLEY: Mr. Malone, when we decided --
5 and whether or not we complied --

6 COUNCILMAN MALONE: And, also, with this
7 new personnel officer that we have, what is her
8 responsibilities? If these files are so
9 sensitive, should she be there to supervise
10 these files so nobody else would pick them up
11 and take them? Or should she give instructions
12 to the fire department? Because really and
13 truly, in her statement, I know this is not a
14 trial, but those files stayed in the hall for
15 nine to 10 days. We don't know who went inside
16 of the boxes. This is her statement. They
17 left on the 4th. It was on the 26th or 23rd
18 when she put the files in the hall, and that's
19 nine to 10 days.

20 MR. NIX: You make a good point. And, if
21 we find out about anybody who took them, then
22 they'll be disciplined as well.

23 MR. HOLLEY: Two wrongs don't make a right,
24 Tony.

25 COUNCILMAN MALONE: Amen.